



January 27, 2004

HOUSE BILL No. 1365

DIGEST OF HB 1365 (Updated January 22, 2004 10:44 am - DI 92)

Citations Affected: IC 6-2.5; IC 6-3; IC 6-4.1; IC 6-5.5; noncode.

Synopsis: Various state tax matters. Makes the following changes to the sales and use tax: (1) Grants a credit against Indiana use tax for sales tax paid in another state for a vehicle, a watercraft, or an aircraft. (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail transaction. (3) Indicates that a deduction for sales tax paid on a purchase price that becomes uncollectible is not assignable. (4) Requires certain out-of-state entities to collect sales tax in Indiana. Requires interest and intangible expenses incurred in certain related member transactions and taken as a deduction for federal income tax purposes to be added back to income for adjusted gross income and financial institutions tax purposes. Makes the following changes to the adjusted gross income tax: (1) Changes the method of calculating the Indiana net operating loss deduction. (2) Eliminates the carryback of net operating loss deductions. Repeals the sales tax credit for sales of motor vehicles, trailers, watercraft, and aircraft that are sold in Indiana and titled or registered in another state.

Effective: January 1, 2004 (retroactive); March 1, 2004 (retroactive); July 1, 2004.

Cochran, Liggett, Kuzman

January 20, 2004, read first time and referred to Committee on Ways and Means.
January 26, 2004, amended, reported — Do Pass.

HB 1365—LS 7382/DI 51+



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January 27, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-3-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this
3 chapter:

4 (a) "Use" means the exercise of any right or power of ownership
5 over tangible personal property.

6 (b) "Storage" means the keeping or retention of tangible personal
7 property in Indiana for any purpose except the subsequent use of that
8 property solely outside Indiana.

9 (c) "A retail merchant engaged in business in Indiana" includes any
10 retail merchant who makes retail transactions in which a person
11 acquires personal property **or services** for use, storage, or consumption
12 in Indiana and who: ~~maintains~~:

13 (1) **maintains** an office, place of distribution, sales location,
14 sample location, warehouse, storage place, or other place of
15 business which is located in Indiana and which the retail
16 merchant maintains, occupies, or uses, either permanently or
17 temporarily, either directly or indirectly, and either by ~~himself~~ **the**

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1 **retail merchant** or through ~~an~~ **a representative**, agent, or
 2 subsidiary; ~~or~~

3 (2) **maintains** a representative, agent, salesman, canvasser, or
 4 solicitor who, while operating in Indiana under the authority of
 5 and on behalf of the retail merchant or a subsidiary of the retail
 6 merchant, sells, delivers, **installs, repairs, assembles, sets up,**
 7 **accepts returns of, bills, invoices,** or takes orders for sales of
 8 tangible personal property **or services** to be used, stored, or
 9 consumed in Indiana;

10 (3) **is otherwise required to register as a retail merchant**
 11 **under IC 6-2.5-8-1; or**

12 (4) **may be required by the state to collect tax under this**
 13 **article to the extent allowed under the Constitution of the**
 14 **United States and federal law.**

15 (d) Notwithstanding any other provision of this section, tangible or
 16 intangible property that is:

17 (1) owned or leased by a person that has contracted with a
 18 commercial printer for printing; and

19 (2) located at the premises of the commercial printer;

20 shall not be considered to be, or to create, an office, a place of
 21 distribution, a sales location, a sample location, a warehouse, a storage
 22 place, or other place of business maintained, occupied, or used in any
 23 way by the person. A commercial printer with which a person has
 24 contracted for printing shall not be considered to be in any way a
 25 representative, an agent, a salesman, a canvasser, or a solicitor for the
 26 person.

27 SECTION 2. IC 6-2.5-3-5 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ A person is
 29 entitled to a credit against the use tax imposed on the use, storage, or
 30 consumption of a particular item of tangible personal property equal to
 31 the amount, if any, of sales tax, purchase tax, or use tax paid to another
 32 state, territory, or possession of the United States for the acquisition of
 33 that property.

34 ~~(b) The credit provided under subsection (a) does not apply to the~~
 35 ~~use tax imposed on the use, storage, or consumption of vehicles,~~
 36 ~~watercraft, or aircraft that are required to be titled, registered, or~~
 37 ~~licensed by Indiana.~~

38 SECTION 3. IC 6-2.5-4-11 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE MARCH 1, 2004 (RETROACTIVE)]: Sec.
 40 11. (a) A person is a retail merchant making a retail transaction when
 41 ~~he the person~~ **furnishes local cable television or radio service or**
 42 **intrastate cable satellite television or radio service that terminates in**

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Indiana.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of ~~local~~ cable television **or radio** service or ~~intrastate cable~~ **satellite or radio** television service.

SECTION 4. IC 6-2.5-6-9, AS AMENDED BY P.L.257-2003, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which ~~he a retail merchant~~ must remit under section 7 of this chapter, ~~a the~~ retail merchant shall, subject to ~~subsection~~ **subsections (c) and (d)**, deduct from ~~his the retail merchant's~~ gross retail income from retail transactions made during a particular reporting period, an amount equal to ~~his the retail merchant's~~ receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(c)(6); (d)(6)~~, include the amount collected as part of ~~his the retail merchant's~~ gross retail income from retail transactions for the particular reporting period in which ~~he the retail merchant~~ makes the collection.

(c) The right to a deduction under this section is not assignable.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

- (1) The deduction does not include interest.
- (2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:
 - (A) financing charges or interest;
 - (B) sales or use taxes charged on the purchase price;
 - (C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
 - (D) expenses incurred in attempting to collect any debt; and
 - (E) repossessed property.

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(3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

(4) If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for **the** refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

(5) If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

(6) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 5. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail

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1 transactions from potential customers in Indiana;

2 (B) enters into a contract to provide property or services to an
3 agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational**
4 ~~institution of higher education~~ (as defined in IC 20-12-0.5-1);
5 ~~or~~

6 (C) agrees to sell property or services to an agency (as defined
7 in IC 4-13-2-1) or an institution of higher education (as
8 defined in IC 20-12-0.5-1); **or**

9 **(D) is closely related to another person that maintains a**
10 **place of business in Indiana or is described in clause (A),**
11 **(B), or (C);**

12 shall file an application for a retail merchant's certificate under this
13 chapter and collect and remit tax as provided in this article. Conduct
14 described in subdivision (3)(B) and (3)(C) occurring after June 30,
15 2003, constitutes consent to be treated under this article as if the person
16 has a place of business in Indiana or is engaging in conduct described
17 in subdivision (3)(A), including the provisions of this article that
18 require a person to collect and remit tax under this article.

19 (b) A person is rebuttably presumed to be engaging in the regular or
20 systematic soliciting of retail transactions from potential customers in
21 Indiana if the person does any of the following:

22 (1) Distributes catalogs, periodicals, advertising flyers, or other
23 written solicitations of business to potential customers in Indiana,
24 regardless of whether the distribution is by mail or otherwise and
25 without regard to the place from which the distribution originated
26 or in which the materials were prepared.

27 (2) Displays advertisements on billboards or displays other
28 outdoor advertisements in Indiana.

29 (3) Advertises in newspapers published in Indiana.

30 (4) Advertises in trade journals or other periodicals that circulate
31 primarily in Indiana.

32 (5) Advertises in Indiana editions of a national or regional
33 publication or a limited regional edition in which Indiana is
34 included as part of a broader regional or national publication if
35 the advertisements are not placed in other geographically defined
36 editions of the same issue of the same publication.

37 (6) Advertises in editions of regional or national publications that
38 are not by the contents of the editions geographically targeted to
39 Indiana but that are sold over the counter in Indiana or by
40 subscription to Indiana residents.

41 (7) Broadcasts on a radio or television station located in Indiana.

42 (8) Makes any other solicitation by telegraphy, telephone,

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computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

- (1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or
- (2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

- (1) are independent of a person that is soliciting customers in Indiana; and
- (2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; **but**

(B) excluding:

- (i) delivery of goods;
- (ii) billing or invoicing for the sale of goods;
- (iii) providing repairs of goods;
- (iv) assembling or setting up goods for use by the purchaser; or
- (v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

- (A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;
- (B) pay for each other's services in whole or in part contingent on the volume or value of sales; or
- (C) share a common business plan or substantially coordinate their business plans; and

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(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons.

SECTION 6. IC 6-3-1-3.5, AS AMENDED BY P.L.1-2004, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000).

(4) Subtract one thousand dollars (\$1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

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(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) one thousand five hundred dollars (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996; and

(B) five hundred dollars (\$500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars (\$40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars (\$2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint

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returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars (\$2,500); or

(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus

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depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(20) Add an amount equal to:

(A) interest expenses and costs; and

(B) intangible expenses and costs;

directly or indirectly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(21) Add an amount equal to the deduction allowed under Section 172 of the Internal Revenue Code for net operating losses.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to:

(A) interest expenses and costs; and

(B) intangible expenses and costs;

directly or indirectly paid, accrued, or incurred to or in

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connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(7) Add an amount equal to the deduction allowed under Section 172 of the Internal Revenue Code for net operating losses.

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to:

(A) interest expenses and costs; and

(B) intangible expenses and costs;

directly or indirectly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

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(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to:

(A) interest expenses and costs; and

(B) intangible expenses and costs;

directly or indirectly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(4) Add an amount equal to:

(A) interest expenses and costs; and

(B) intangible expenses and costs;

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1 **directly or indirectly paid, accrued, or incurred to or in**
 2 **connection with one (1) or more transactions with one (1) or**
 3 **more related members in the taxable year.**

4 **(5) Add an amount equal to the deduction allowed under**
 5 **Section 642(d) of the Internal Revenue Code for net operating**
 6 **losses.**

7 (f) This subsection applies only to the extent that an individual paid
 8 property taxes in 2004 that were imposed for the March 1, 2002,
 9 assessment date or the January 15, 2003, assessment date. The
 10 maximum amount of the deduction under subsection (a)(17) is equal
 11 to the amount determined under STEP FIVE of the following formula:

12 STEP ONE: Determine the amount of property taxes that the
 13 taxpayer paid after December 31, 2003, in the taxable year for
 14 property taxes imposed for the March 1, 2002, assessment date
 15 and the January 15, 2003, assessment date.

16 STEP TWO: Determine the amount of property taxes that the
 17 taxpayer paid in the taxable year for the March 1, 2003,
 18 assessment date and the January 15, 2004, assessment date.

19 STEP THREE: Determine the result of the STEP ONE amount
 20 divided by the STEP TWO amount.

21 STEP FOUR: Multiply the STEP THREE amount by two
 22 thousand five hundred dollars (\$2,500).

23 STEP FIVE: Determine the sum of the STEP THREE amount and
 24 two thousand five hundred dollars (\$2,500).

25 **(g) An adjustment under subsection (a)(20), (b)(6), (c)(6), (d)(6),**
 26 **or (e)(4) is not required to the extent that:**

27 **(1) the taxpayer establishes by clear and convincing evidence,**
 28 **as determined by the department, that the adjustment is**
 29 **unreasonable; or**

30 **(2) the taxpayer and the department agree in writing to the**
 31 **application or use of an alternative method of apportionment**
 32 **under IC 6-3-2-2(l).**

33 SECTION 7. IC 6-3-1-20 IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JANUARY 1, 2004] (RETROACTIVE): Sec. 20. The
 35 term "business income" means:

36 **(1) income arising from transactions and activity in the regular**
 37 **course of the taxpayer's trade or business and includes income**
 38 **from tangible and intangible property if the acquisition,**
 39 **management, and disposition of the property constitutes integral**
 40 **parts of the taxpayer's regular trade or business operations; and**
 41 **(2) all other income that the state is not prohibited from**
 42 **taxing under the Constitution of the United States or other**

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1 federal law.

2 SECTION 8. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 34. For purposes of this**
5 **chapter, "intangible investments" means investments in:**

- 6 (1) stocks;
- 7 (2) bonds;
- 8 (3) notes;
- 9 (4) interests in a partnership;
- 10 (5) patents;
- 11 (6) patent applications;
- 12 (7) trademarks;
- 13 (8) trade names;
- 14 (9) copyrights;
- 15 (10) similar types of intangible assets; and
- 16 (11) other debt obligations, including debt obligations of
- 17 related members.

18 SECTION 9. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
20 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 35. For purposes of this**
21 **chapter, "related member" means with respect to any taxpayer**
22 **during all or any part of a taxable year, is:**

- 23 (1) a person or corporation that is a related entity;
- 24 (2) a person or corporation that is a component member (as
- 25 defined in Section 1563(b) of the Internal Revenue Code);
- 26 (3) a person or corporation to or from which there is
- 27 attribution of stock ownership in accordance with Section
- 28 1563(e) of the Internal Revenue Code; or
- 29 (4) a person, corporation, or partnership that,
- 30 notwithstanding its form of organization, bears the same
- 31 relationship to the taxpayer as a person or corporation
- 32 described in subdivision (1), (2), or (3).

33 SECTION 10. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
35 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 36. (a) As used in this**
36 **chapter, "intangible expenses and costs" includes expenses, losses,**
37 **and costs for, related to, or in connection directly or indirectly with**
38 **the direct or indirect:**

- 39 (1) acquisition;
- 40 (2) use;
- 41 (3) maintenance or management;
- 42 (4) ownership;

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1 (5) sale; or
 2 (6) exchange;
 3 of, or any other direct or indirect disposition of, intangible
 4 property to the extent that the amounts are allowed as deductions
 5 or costs in determining taxable income before operating loss
 6 deductions and special deductions for the taxable year under the
 7 Internal Revenue Code.

8 (b) The term includes losses related to or incurred in connection
 9 directly or indirectly with:

10 (1) factoring transactions;

11 (2) losses related to or incurred in connection directly or
 12 indirectly with:

13 (A) discounting transactions;

14 (B) royalty, patent, technical, and copyright fees;

15 (C) licensing fees; and

16 (D) other similar expenses and costs.

17 SECTION 11. IC 6-3-1-37 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 19 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 37. For purposes of this**
 20 **chapter, "interest expenses and costs" includes amounts directly or**
 21 **indirectly allowed as deductions under Section 163 of the Internal**
 22 **Revenue Code for purposes of determining taxable income under**
 23 **the Internal Revenue Code.**

24 SECTION 12. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 26 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 38. As used in this**
 27 **chapter, "related entity" means:**

28 (1) a stockholder who is:

29 (A) an individual; or

30 (B) a member of the stockholder's family set forth in
 31 Section 318 of the Internal Revenue Code;

32 if the stockholder and the members of the stockholder's
 33 family directly, indirectly, beneficially, or constructively own
 34 a total of at least fifty percent (50%) of the value of the
 35 taxpayer's outstanding stock;

36 (2) a:

37 (A) stockholder; or

38 (B) stockholder's partnership, estate, trust, or corporation;
 39 if the stockholder and the stockholder's partnership, estate,
 40 trust, or corporation directly, indirectly, beneficially, or
 41 constructively own a total of at least fifty percent (50%) of the
 42 value of the taxpayer's outstanding stock; or

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1 (3) a:

2 (A) corporation; or

3 (B) party related to the corporation in a manner that
4 would require an attribution of stock from the corporation
5 to the party or from the party to the corporation under the
6 attribution rules of the Internal Revenue Code;

7 if the taxpayer directly, indirectly, beneficially, or
8 constructively owns a total of at least fifty percent (50%) of
9 the value of the corporation's outstanding stock.

10 The attribution rules of the Internal Revenue Code apply for
11 purposes of determining whether the ownership requirements of
12 this definition have been met.

13 SECTION 13. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss),
14 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) With regard to
16 corporations and nonresident persons, "adjusted gross income derived
17 from sources within Indiana", for the purposes of this article, shall
18 mean and include:

19 (1) income from real or tangible personal property located in this
20 state;

21 (2) income from doing business in this state;

22 (3) income from a trade or profession conducted in this state;

23 (4) compensation for labor or services rendered within this state;

24 and

25 (5) income from stocks, bonds, notes, bank deposits, patents,
26 copyrights, secret processes and formulas, good will, trademarks,
27 trade brands, franchises, and other intangible personal property if
28 the receipt from the intangible is attributable to Indiana under
29 section 2.2 of this chapter; and

30 (6) any business income, regardless of whether it is described
31 in this subsection.

32 In the case of nonbusiness income described in subsection (g), only so
33 much of such income as is allocated to this state under the provisions
34 of subsections (h) through (k) shall be deemed to be derived from
35 sources within Indiana. In the case of business income, only so much
36 of such income as is apportioned to this state under the provision of
37 subsection (b) shall be deemed to be derived from sources within the
38 state of Indiana. In the case of compensation of a team member (as
39 defined in section 2.7 of this chapter) only the portion of income
40 determined to be Indiana income under section 2.7 of this chapter is
41 considered derived from sources within Indiana. In the case of a
42 corporation that is a life insurance company (as defined in Section

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816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l) **and subject to subsection (o)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to

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the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
 - (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere

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during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable

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year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business

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activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end

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of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 14. IC 6-3-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
Sec. 2.5. (a) This section applies to a resident person. ~~for a particular taxable year; if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, is the remainder determined under STEP FOUR of the following formula:~~

~~STEP ONE: Determine the taxpayer's adjusted gross income, for the taxable year, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.~~

~~STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5.~~

~~STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.~~

~~STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.~~

~~(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of~~

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subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(b) Resident persons are entitled to a net operating loss deduction.

(c) The Indiana net operating loss is equal to the taxpayer's federal net operating loss, calculated according to Section 172 of the Internal Revenue Code, adjusted for the modifications required by IC 6-3-1-3.5, represented as a positive number.

(d) Subject to the limitations contained in subsection (e), the amount calculated in subsection (c) shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in future taxable years. The deduction may be taken only after all other deductions from adjusted gross income allowed under this chapter have been taken.

(e) An amount remaining after the deduction is taken in a taxable year may be carried forward to the following taxable years. The amount of the deduction carried forward from a taxable year shall be reduced to the extent that the carry forward is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the deduction is taken.

(2) Twenty (20) years after the year in which the net operating loss was incurred.

A net operating loss deduction may not be carried back.

SECTION 15. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss), SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person. ~~for a particular taxable year; if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:~~

~~STEP ONE: Determine, in the manner prescribed in section 2 of~~

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1 this chapter, the taxpayer's adjusted gross income, for the taxable
 2 year, derived from sources within Indiana, as calculated without
 3 the deduction for net operating losses provided by Section 172 of
 4 the Internal Revenue Code.

5 STEP TWO: Determine, in the manner prescribed in subsection
 6 (b), the amount of the taxpayer's net operating losses that are
 7 deductible for the taxable year under Section 172 of the Internal
 8 Revenue Code, as adjusted to reflect the modifications required
 9 by IC 6-3-1-3.5, and that are derived from sources within Indiana.

10 STEP THREE: Enter the larger of zero (0) or the amount
 11 determined under STEP TWO.

12 STEP FOUR: Subtract the amount entered under STEP THREE
 13 from the amount determined under STEP ONE.

14 (b) For purposes of STEP TWO of subsection (a), the modifications
 15 that are to be applied are those modifications required under
 16 IC 6-3-1-3.5 for the same taxable year during which each net operating
 17 loss was incurred. In addition, for purposes of STEP TWO of
 18 subsection (a), the amount of a taxpayer's net operating losses that are
 19 derived from sources within Indiana shall be determined in the same
 20 manner that the amount of the taxpayer's income derived from sources
 21 within Indiana is determined, under section 2 of this chapter, for the
 22 same taxable year during which each loss was incurred. Also, for
 23 purposes of STEP TWO of subsection (a), the following procedures
 24 apply:

25 (1) The taxpayer's net operating loss for a particular taxable year
 26 shall be treated as a positive number.

27 (2) A modification that is to be added to federal adjusted gross
 28 income or federal taxable income under IC 6-3-1-3.5 shall be
 29 treated as a negative number.

30 (3) A modification that is to be subtracted from federal adjusted
 31 gross income or federal taxable income under IC 6-3-1-3.5 shall
 32 be treated as a positive number.

33 (4) A net operating loss under this section shall be considered
 34 even though in the year the taxpayer incurred the loss the taxpayer
 35 was not subject to the tax imposed under section 1 of this chapter
 36 because the taxpayer was:

37 (A) a life insurance company (as defined in Section 816(a) of
 38 the Internal Revenue Code); or

39 (B) an insurance company subject to tax under Section 831 of the
 40 Internal Revenue Code.

41 (b) Corporations and nonresident persons are entitled to a net
 42 operating loss deduction. The amount of the deduction taken in a

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taxable year may not exceed the taxpayer's unused Indiana net operating losses carried forward for use in that year.

(c) The Indiana net operating loss is equal to:

(1) the taxpayer's federal net operating loss, calculated according to Section 172 of the Internal Revenue Code, adjusted for the modifications required by IC 6-3-1-3.5, represented as a positive number; multiplied by

(2) the taxpayer's Indiana apportionment percentage as determined under section 2 of this chapter for the same year that the federal loss was incurred.

(d) Subject to the limitations contained in subsection (e), the amount calculated in subsection (c) shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in future taxable years. The deduction shall be taken only after all other deductions from adjusted gross income allowed under this chapter have been taken.

(e) An amount remaining after the deduction is taken in a taxable year may be carried forward to the following taxable years. The amount of the deduction carried forward from a taxable year shall be reduced to the extent that the carry forward is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the deduction is taken.

(2) Twenty (20) years after the year in which the net operating loss was incurred.

A net operating loss deduction may not be carried back.

SECTION 16. IC 6-4.1-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) "Class A transferee" means a transferee who is a lineal ancestor or lineal descendant of the transferor.

(b) "Class B transferee" means a transferee who is a:

(1) brother or sister of the transferor;

(2) descendant of a brother or sister of the transferor; or

(3) spouse, widow, or widower of a child of the transferor.

(c) "Class C transferee" means a transferee, except a surviving spouse, who is neither a Class A nor a Class B transferee.

(d) For purposes of this section, a legally adopted child is to be treated as if ~~he~~ **the child** were the natural child of ~~his~~ **the child's** adopting parent **if the adoption occurred before the individual was totally emancipated.** For purposes of this section, if a relationship of loco parentis has existed for at least ten (10) years and if the relationship began before the child's fifteenth birthday, the child is to

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be considered the natural child of the loco parentis parent.

SECTION 17. IC 6-5.5-1-2, AS AMENDED BY P.L.105-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

(A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

(B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) ~~Add~~ The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) An amount equal to:

(i) interest expenses and costs; and

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(ii) intangible expenses and costs;
 directly or indirectly paid, accrued, or incurred to or in
 connection with one (1) or more transactions with one (1)
 or more related members in the taxable year.

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute
 of the United States prohibits from being used to measure the
 tax imposed by this chapter.

(B) Income that is derived from sources outside the United
 States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes
 worthless, as permitted under Section 166(a) of the Internal
 Revenue Code.

(D) An amount equal to any bad debt reserves that are
 included in federal income because of accounting method
 changes required by Section 585(c)(3)(A) or Section 593 of
 the Internal Revenue Code.

(E) ~~Subtract~~ The amount necessary to make the adjusted gross
 income of any taxpayer that owns property for which bonus
 depreciation was allowed in the current taxable year or in an
 earlier taxable year equal to the amount of adjusted gross
 income that would have been computed had an election not
 been made under Section 168(k)(2)(C)(iii) of the Internal
 Revenue Code to apply bonus depreciation.

(b) In the case of a credit union, "adjusted gross income" for a
 taxable year means the total transfers to undivided earnings minus
 dividends for that taxable year after statutory reserves are set aside
 under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income"
 means the **sum of the** company's federal taxable income, **as adjusted**
under subsection (e), multiplied by the quotient of:

(1) the aggregate of the gross payments collected by the company
 during the taxable year from old and new business upon
 investment contracts issued by the company and held by residents
 of Indiana; divided by

(2) the total amount of gross payments collected during the
 taxable year by the company from the business upon investment
 contracts issued by the company and held by persons residing
 within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a
 person, copartnership, association, limited liability company, or
 corporation, whether domestic or foreign, that:

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(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

- (A) a so-called bond;
- (B) a share;
- (C) a coupon;
- (D) a certificate of membership;
- (E) an agreement;
- (F) a pretended agreement; or
- (G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

(e) The federal adjusted gross income of an investment company shall be adjusted by adding an amount equal to:

- (1) interest expenses and costs; and**
- (2) intangible expenses and costs;**

directly or indirectly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(f) An adjustment under subsection (a)(1)(H) or (e) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or**
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment.**

SECTION 18. IC 6-5.5-1-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 10.5. For purposes of this chapter, "intangible investments" means investments in:**

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- (1) stocks;
- (2) bonds;
- (3) notes;
- (4) interests in a partnerships;
- (5) patents;
- (6) patent applications;
- (7) trademarks;
- (8) trade names;
- (9) copyrights;
- (10) similar types of intangible assets; and
- (11) other debt obligations, including debt obligations of related members.

SECTION 19. IC 6-5.5-1-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.5. For purposes of this chapter, "related member" means with respect to any taxpayer during all or any part of a taxable year, is an entity:**

- (1) that is a related entity;
- (2) that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);
- (3) to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
- (4) that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3).

SECTION 20. IC 6-5.5-1-12.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.6. (a) As used in this chapter, "intangible expenses and costs" includes expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect:**

- (1) acquisition;
- (2) use;
- (3) maintenance or management;
- (4) ownership;
- (5) sale; or
- (6) exchange;

of or any other direct or indirect disposition of intangible property to the extent that the amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue

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(b) The term includes losses related to or incurred in connection directly or indirectly with:

(1) factoring transactions;

(2) losses related to or incurred in connection directly or indirectly with:

(A) discounting transactions;

(B) royalty, patent, technical, and copyright fees;

(C) licensing fees; and

(D) other similar expenses and costs.

SECTION 21. IC 6-5.5-1-12.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.7. For purposes of this chapter, "interest expenses and costs" includes amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.**

SECTION 22. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.8. As used in this chapter, "related entity" means:**

(1) a stockholder who is:

(A) an individual; or

(B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation;

if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

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1 if the taxpayer directly, indirectly, beneficially, or
 2 constructively owns a total of at least fifty percent (50%) of
 3 the value of the corporation's outstanding stock.

4 The attribution rules of the Internal Revenue Code apply for
 5 purposes of determining whether the ownership requirements of
 6 this definition have been met.

7 SECTION 23. IC 6-2.5-5-15 IS REPEALED [EFFECTIVE JULY
 8 1, 2004].

9 SECTION 24. [EFFECTIVE JANUARY 1, 2004
 10 (RETROACTIVE)] (a) IC 6-2.5-3-5, as amended by this act, applies
 11 only to vehicles, watercraft, and aircraft that are initially titled,
 12 registered, or licensed in Indiana after June 30, 2004.

13 (b) IC 6-2.5-4-11, as amended by this act, applies only to
 14 transactions occurring after March 1, 2004. A retail transaction to
 15 which IC 6-2.5-4-11, as amended by this act, applies shall be
 16 considered as having occurred after March 1, 2004, if charges are
 17 collected for the retail transactions upon original statements and
 18 billings dated after March 31, 2004.

19 (c) IC 6-2.5-8-10, as amended by this act, and the repeal of
 20 IC 6-2.5-5-15 by this act apply only to retail transactions occurring
 21 after June 30, 2004. A retail transaction shall be considered as
 22 having occurred after June 30, 2004, to the extent that delivery of
 23 the property or services constituting selling at retail is made after
 24 that date to the purchaser or to the place of delivery designated by
 25 the purchaser. However, a transaction shall be considered as
 26 having occurred before July 1, 2004, to the extent that the
 27 agreement of the parties to the transaction was entered into before
 28 July 1, 2004, and payment for the property or services furnished
 29 in the transaction is made before July 1, 2004, notwithstanding the
 30 delivery of the property or services after June 30, 2004.

31 (d) IC 6-2.5-6-9, as amended by this act, applies only to
 32 deductions assigned after June 30, 2004.

33 (e) The following provisions apply only to taxable years
 34 beginning after December 31, 2003:

35 (1) IC 6-3-1-3.5.

36 (2) IC 6-5.5-1-2.

37 (f) The following provisions apply only to the use of a net
 38 operating loss as a deduction for taxable years beginning after
 39 December 31, 2003, regardless of the taxable year when the loss
 40 that is the basis for the net operating loss deduction occurred:

41 (1) IC 6-3-2-2.5.

42 (2) IC 6-3-2-2.6.

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- 1 **(3) IC 6-5.5-2-1.**
- 2 **(g) IC 6-4.1-1-3, as amended by this act, applies only to an**
- 3 **adopting parent who dies after June 30, 2004.**
- 4 **SECTION 25. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property **or services** for use, storage, or consumption in Indiana and who: ~~maintains~~:

(1) **maintains** an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by ~~himself~~ **the retail merchant** or through ~~an~~ **a representative**, agent, or subsidiary; ~~or~~

(2) **maintains** a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, **installs, repairs, assembles, sets up, accepts returns of, bills, invoices**, or takes orders for sales of tangible personal property **or services** to be used, stored, or consumed in Indiana;

(3) **is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or**

(4) **may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.**

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

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(2) located at the premises of the commercial printer; shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person."

Page 3, between lines 33 and 34, begin a new paragraph and insert: "SECTION 5. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;
 - (B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); ~~or~~
 - (C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or an institution of higher education (as defined in IC 20-12-0.5-1); **or**
 - (D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);**

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

- (1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated

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or in which the materials were prepared.

(2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.

(3) Advertises in newspapers published in Indiana.

(4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.

(5) Advertises in Indiana editions of a national or regional publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; **but**

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

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(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

(B) pay for each other's services in whole or in part contingent on the volume or value of sales; or

(C) share a common business plan or substantially coordinate their business plans; and

(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons."

Page 9, between lines 34 and 35, begin a new paragraph and insert:

"(g) An adjustment under subsection (a)(20), (b)(6), (c)(6),

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(d)(6), or (e)(4) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment under IC 6-3-2-2(l).

SECTION 7. IC 6-3-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004] (RETROACTIVE): Sec. 20. The term "business income" means:

- (1) income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations; and
- (2) all other income that the state is not prohibited from taxing under the Constitution of the United States or other federal law."

Page 10, line 12, delete "any of the following:" and insert " with respect to any taxpayer during all or any part of a taxable year, is:

- (1) a person or corporation that is a related entity;
- (2) a person or corporation that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);
- (3) a person or corporation to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
- (4) a person, corporation, or partnership that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 10, delete lines 13 through 37.

Page 11, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 12. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 38. As used in this chapter, "related entity" means:

- (1) a stockholder who is:
 - (A) an individual; or
 - (B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;
 if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own

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a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation; if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code; if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met.

SECTION 13. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss), SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter; and

(6) any business income, regardless of whether it is described in this subsection.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions

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of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l) **and subject to subsection (o)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's

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nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations,

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the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are

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allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or

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other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be

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reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance."

Page 17, after line 42, begin a new paragraph and insert:

"(f) An adjustment under subsection (a)(1)(H) or (e) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or**
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment.**

Page 18, line 21, delete "any of the" and insert **" with respect to any taxpayer during all or any part of a taxable year, is an entity:**

- (1) that is a related entity;**
- (2) that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);**
- (3) to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or**
- (4) that, notwithstanding its form of organization, bears the**

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same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 18, delete lines 22 through 42.

Page 19, delete lines 1 through 5.

Page 19, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 21. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 12.8. As used in this chapter, "related entity" means:

(1) a stockholder who is:

(A) an individual; or

(B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation;

if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met."

Page 20, line 9, delete "The" and insert **"IC 6-2.5-8-10, as amended by this act, and the"**.

Page 20, line 9, delete "applies" and insert **"apply"**.

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1365 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 17, nays 10.

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